

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR EXTENSION OF TIME TO PERFECT	)	
BENEFICIAL WATER USE PERMIT	)	FINAL ORDER
P59786-41H ISSUED TO	)	
CLARENCE VAN DYKE	)	

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the July 23, 1997, Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Application for Extension of Time to perfect Beneficial Water Use Permit P59786-41H by Clarence Van Dyke is hereby granted. The diversion and distribution works shall be completed and water shall be applied to a beneficial use as specified in the permit on or before December 31, 1998. The notice of completion of the permitted water development must be filed no later than November 30, 1998. No further extensions of time will be granted for this permit.

NOTICE

The Department's Final Order may be appealed in accordance

**CASE #** 59786

with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 3rd day of September, 1997.



Jack Stults, Administrator  
Department of Natural Resources  
and Conservation  
Water Resources Division  
P.O. Box 201601  
Helena, Montana 59620-1601  
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, first class mail, at their address or addresses this 8th day of September, 1997, as follows:

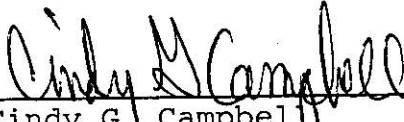
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Scott Compton, Manager  
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Regional Office  
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(via electronic mail)

Vivian A. Lighthizer,  
Hearing Examiner  
Department of Natural  
Resources & Conservation  
P.O. Box 201601  
Helena, MT 59620-1601

  
Cindy G. Campbell  
Hearings Assistant

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF BENEFICIAL     )  
WATER USE PERMIT P59786-41H    )  
ISSUED TO CLARENCE VAN DYKE    )     PROPOSAL  
  )     FOR  
  )     DECISION

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a show cause hearing was held on June 10, 1997, in the above-entitled matter to allow Mr. Van Dyke (Permittee) to show why Beneficial Water Use Permit P59786-41H should not be modified or revoked in accordance with Mont. Code Ann. § 85-2-314 (1995).

**APPEARANCES**

Clarence Van Dyke appeared at the hearing in person and by and through counsel, Russ McElyea.

The Department of Natural Resources and Conservation appeared at the hearing by and through counsel, Fred Robinson.

**EXHIBITS**

Permittee offered 11 exhibits for the record. All were accepted without objection.

Permittee's Exhibit 1 consists of 13 pages which are photocopies of drill records made by Red Tiger Irrigation, Drilling & Supply, Inc.

**CASE #** 59786

Permittee's Exhibit 2 is a two-page letter from Eddie Juvan to Clarence Van Dyke discussing the well data obtained by Red Tiger Drilling.

Permittee's Exhibits 3 through 10 are photographs taken by Mr. Van Dyke on June 9, 1997. They depict 120 acres of the place of use which has been seeded to grass since 1992, 40 acres at a time.

Permittee's Exhibit 11 is a Proposal by Red Tiger Drilling dated July 23, 1995, to complete the drilling and installation of the well for \$38,940.00.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following:

#### FINDINGS OF FACT

1. On April 18, 1986, Beneficial Water Use Permit 59786-41H was issued to Clarence Van Dyke. Under the terms of this permit, Mr. Van Dyke was required to have completed the permitted diversion and distribution works and applied water to beneficial use as specified in the permit, by November 30, 1988. An extension of time was granted on July 19, 1989. A second extension of time was granted on June 7, 1993. A notice of completion was due December 31, 1996. (Department file.)

2. A third application for extension of time was received by the Department on October 30, 1996. A temporary extension of time was granted on November 7, 1996. A notice to water users was published in the Bozeman Daily Chronicle on February 5, 1997. No objections to the extension were received by the Department. (Department file.)

3. The application for a third extension of time was reviewed by the Bozeman Water Resources Regional Office. Jan R. Mack, Water Resources Specialist, recommended the extension of time be denied. The extension-of-time committee agreed with the Mr. Mack's recommendation and a Notice of Action for Extension of Time denying the extension was issued March 5, 1997. Mr. Van Dyke filed a timely request for hearing on March 24, 1997. (Department file.)

4. Mr. Van Dyke obtained a bid proposal dated July 23, 1995, from Red Tiger Drilling (Red Tiger) to complete the well at a cost of \$38,940.00. At a later date, Mr. Van Dyke told Red Tiger to proceed with the well only to find Red Tiger no longer had a reverse rotary rig which is required to drill a well the size Mr. Van Dyke needs. Mr. Van Dyke then searched all through the northwestern part of the United States including the northwestern part of Montana to locate a well driller with the

equipment and capability to complete the well. He now has a commitment from a driller (Keith Davis) who has a reverse rotary rig to complete the well in the fall of 1997. Since 1992, Mr. Van Dyke has, each year, seeded grass on 40 acres of the permitted place of use so that now he has 120 acres seeded to grass and has another 40 acres to be seeded to complete that quarter section. (Applicant's Exhibits 1 through 11 and testimony of Clarence Van Dyke.)

5. Mr. Van Dyke is financially able to have the well installed within the year of 1997. (Testimony of Clarence Van Dyke.)

6. Mr. Van Dyke testified he would not request further extensions if the well is not completed by the fall of 1997. (Testimony of Clarence Van Dyke.)

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and over the parties hereto. Mont. Code Ann § 85-2-312(3).

2. The Department gave proper notice of the hearing and all relevant substantive and procedural requirements of law or rule

have been fulfilled, therefore the matter is properly before the Hearing Examiner. Findings of Fact 1 through 3.

3. Mr. Van Dyke has shown diligence toward the completion of the project and has the financial ability to complete this project. Findings of Fact 4 and 5.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

#### PROPOSED ORDER

Application for Extension of Time to perfect Beneficial Water Use P59786-41H by Clarence Van Dyke is hereby granted. The diversion and distribution works shall be completed and water shall be applied to a beneficial use as specified in the permit on or before December 31, 1998. The notice of completion of the permitted water development must be filed no later than November 30, 1998. No further extensions of time will be granted for this permit.

#### NOTICE


This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. Any exception that contains obscene, lewd, profane, or abusive language shall be



returned to the sender. The exceptions must be filed and served on all parties within 20 days after the Proposal is mailed. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

No final decision shall be made until after the expiration of the time for filing exceptions, and due consideration of timely exceptions, responses and briefs.

Dated the 23<sup>rd</sup> day of July, 1997.

  
Vivian A. Lighthizer  
Hearing Examiner  
Water Resources Division  
Department of Natural Resources  
And Conservation  
P.O. Box 201601  
Helena, MT 59620-1601

CERTIFICATE OF SERVICE

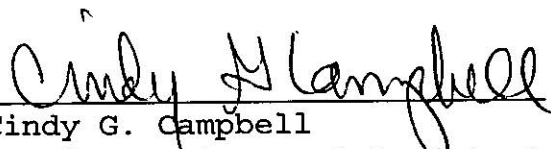
This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, first class mail, at their address or addresses this 23<sup>rd</sup> day of July, 1997, as follows:

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